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United States District Court,  
Western District of Washington JUN 4 2009 DJ

) Case No.:

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY

**CV9 - 776L**

Lance P. McDermott,  
Plaintiff,

vs.

John P. Potter, Postmaster  
General, United States Postal  
Service,

Defendant

Civil Action pursuant to  
) Freedom of Information Act  
(FOIA) - Title 5 section 552,  
) Title 39 section 261, Employee  
Retirement Income Security Act  
(ERISA) - Title 29 section 1132  
and Postal Accountability and  
) Enhancement Act (PAEA) - Title  
39 section 302.  
)  
) Noted for consideration on 19  
) June 2009

### Declaration

The form of this ligation is *Misrepresentation* by United States Postal Service (USPS) Officials concerning the concealment of facts, failure to disclose the facts, telling half truths, and the issuance of false statements concerning the Area Mail Processing Plan (Title 39 section 3691) used to close the Air Mail Centers (AMCs) and contract out the core work. (Lee H. Kimmell v. Herman A. Schaefer, 89 N.Y.2d 257, 675 N.E.2d 450 N.Y.S.2d 715 (1996).)

Officials of the United States Postal Service have acted with complete reckless disregard for the truth and have falsely represented that there is an "approved" Area Mail Processing Plan that closed/will close all Air Mail Centers (AMCs) and excess the Federal Employees while contracting out their work to non-Federal Retirement Plan contract employees.

### Parties



1 1. Defendant - USPS Seattle Processing and Distribution  
2 Manager, Don Jacobus (Page 20 complaint).

3 2. Defendant - USPS Seattle District Manager, Katherine Nash  
4 (Page 21 complaint).

5 3. Plaintiff - USPS Mail Processing Equipment Mechanic,  
6 Lance McDermott.

7 Jurisdiction over the Person

8 Pursuant to the Postal Service Accountability and Enhancement  
9 Act (PSEA) of 2006 incorporated in Title 39 section 409, Congress  
10 has removed the immunity of the United States Postal Service from  
11 suit and granted jurisdiction to the Federal Courts. The Freedom  
12 of Information Act (FOIA) Title 5 section 552(1)(a)(4)(B) gives  
13 jurisdiction to the Court for the withheld Area Mail Processing  
14 Plan information. The Employee Retirement Insurance Savings Act  
15 (ERISA) Title 29 section 1132(e) gives jurisdiction to the  
16 District Courts to take into consideration the subcontracting of  
17 work that affects a Federal Retirement Fund Program.

18 Subject Matter Jurisdiction

19 I am asserting my claim created by federal law pursuant to 28  
20 U.S.C. section 1331 that there is a Federal Question to be  
21 answered by the Federal Court.

22 Scope of Jurisdiction

23 The scope of the Court's jurisdiction is within the  
24 Constitution Article III section 2 and Congressional Statutes  
25 named in this pleading.

Standing

I have been denied the information requested and have been injured by this denial. I have exhausted all administrative procedures get the information and to settle this matter.

## Background

Postal Reorganization Act of August 12, 1970 (Public Law 91-375, 84 Stat. 719).

30 January 1973, Comptroller General report B-114874 - "On March 11, 1971, the Postal Service announced that it was planning to establish the National Bulk Mail System (NBMS) consisting of 21 bulk mail facilities, including the Memphis and Philadelphia facilities, and 12 auxiliary service facilities. According to a Postal Service estimate, the NBMS will cost about \$1 billion and by using modern bulk mail machine-sorting techniques and by consolidating such mail from long-distance transportation, will result in reducing operating costs by about \$300 million a year when it is fully implemented in 1975."

25 June 1973, Comptroller General report B-171594 - "This letter summarizes the briefing GAO representatives gave to your Committee and Subcommittee staffs on March 7, 1973, concerning the United States Postal Service's proposed Preferential Mail System (PMS)... The proposed PMS is intended to improve mail service and to reduce operating costs... In February 1973, the Postmaster General stated that no decision had been made on the proposed PMS and that a great deal of work had to be done before the Postal Service could determine the best policy to be followed. He stated also that the Postal Service would have to prove that it had the technical and managerial capabilities to handle the planned National Bulk Mail System before it could begin developing PMS." Appendix I, letter from the Subcommittee on Postal Facilities and Mail, 9 January, 1973, Dear General: - "I would like to have a General Account Office study done of the postal planning for Preferential Mail System consisting of at least 177 facilities at a cost of approximately four billion dollars..."

1 January 1976 and ending in 31 December 2030 the Postal Service entered into a lease agreement with the Port of Seattle for the lease of the land to build an Air Mail Center (AMC) at

1 the SeaTac Airport. The lease for the land was renewed in 2005  
 2 for the Postal Service to pay \$1.02 a square foot - \$429,677 a  
 3 year for the land. The Postal Service built a 174,000 square  
 4 foot facility. (exhibit 19)

5 10 December 1976, Comptroller General report GGD-76-100,  
 6 Problems of the New National Bulk Mail System - "...The Bulk Mail  
 7 system represents the Service's first attempt to mechanize a  
 8 nationwide mail processing system... Problems encountered in  
 9 development of the system included: overestimation of the  
 10 processing capacity of the system, underestimation of the volume  
 11 of mail... high incidence of misdirected mail... failure to meet  
 delivery standards. It cannot be concluded at this time if the  
 bulk mail system can provide enough savings to justify investment  
 in the system... The Service's ability to make substantial  
 improvements in these areas will largely determine whether the  
 system will be a success or an expensive failure."

12 14 August 1980, Comptroller General report GGD-80-74 - "The  
 13 Service decided in July 1974 to construct a new building a few  
 14 miles from Trenton, New Jersey, to handle all mail processing for  
 15 central New Jersey... Pursuant to an August 1976 request from  
 Congressmen Forsythe and Hughes, we studied the economic  
justification for the proposed transfer of the Toms River mail  
 processing..."

16 1989 GAO report GGD-89-11, - "The U.S. Postal Service (USPS)  
 17 manages approximately 35,000 buildings nationwide... USPS policy  
 18 requires specific coordination within community involved in a  
 19 forthcoming facility relocation to minimize concerns and prevent  
potential delays in acquiring new postal facilities..." (exhibit  
 5) USPS Memorandum Establishing Coordination Procedures, 16  
 March 1988, (exhibit 5, page 22)

20 31 July 1992, GAO report B-248842, USPS Site Acquisition -  
 21 "... Specific concerns included the cost of acquiring the site  
 22 and related construction costs, the need for roadway improvements  
 23 to accommodate large truck operations, and the lack of public  
transportation to the proposed facility... City of Waltham v.  
 USPS (D. Mass. 1992) 786 F. Supp. 105 ... seeking permanent  
injunction ... until USPS: (1) prepares an Environmental Impact  
 24 statement... (2) prepares a floodplains-wetlands study... (3)  
 25 provides a detailed explanation... (4) grants Waltham access to  
 all Postal Service records... CONCLUSION ... The site was  
 purchased, however, without a commitment that the city would  
 assist with roadway improvements that require the taking of

land."

24 September 1992, GAO report T-GGD-92-70, Express Mail Hub Contract Award Was Flawed - "... We found several deviations from the requirements in the solicitation... Selection was not based on all criteria... Cost estimates were inconsistent and contained errors."

25 March 1993, GAO report T-GGD-93-15, Restructuring, Automation, and Ratemaking - (GAO's testimony focuses on the Postal Service's (1) restructuring that largely took place from August to November of 1992, (2) efforts to automate mail processing, and (3) need to reform ratemaking policies and processes. Postal Service data show that the restructuring eliminated about 27,000 overhead positions and resulted in thousands of retirements... Although the restructuring cost the Service slightly over a billion dollars, which was written off in 1992, it expects to save about \$800 million in 1993 and \$1.4 billion annually beginning in 1994... By February 1993, the total work force, including overtime hours, was only about 7,300 employees less than a year earlier in February 1992... Service officials said that they would try to place employees into jobs within their commuting areas before directing employees to relocate to other cities... the Service took several steps designed to both ensure the timely reduction of the work force and minimize the adverse effects on postal employees. - An early out option was offered ... A monetary incentive was offered ... - no layoffs ... retain their current grade and pay indefinitely ... provided training and job placement to assist employees in finding jobs..."

Government Performance and Results Act of August 3, 1993 (Public Law 103-62).

1996 GAO report GGD-96-129A - "... According to Service data, of the 39,149 post offices it operated in fiscal year 1995, 17,702 (about 45 percent) reported taking in annual revenues that were lower than their aggregate expenses for the same year by about \$1.1 billion. The Service is taking steps to upgrade many post offices and make them more accessible to customers. However, the 1970 Act contains detailed criteria and procedures that the Service must follow to close a post office, such as announcing a proposed closing and providing time for anyone affected to appeal the action to the Postal Rate Commission..." note 3 - "Of the 39,149 post offices operated in fiscal year 1995, 10,757 were small stations, branches and community post offices." - "... Between April 1993 and November 1995, after the Service had largely completed a downsizing effort, overall postal employment (career and noncareer) grew by about 10 percent, from 782,000 to 885,000 employees." (Note: 30 Percent of Postal















1 facilities are not revenue producing Post Offices (exhibit 5).)

2 1997 GAO report GGD-97-163R The Postal Service's Draft  
3 Strategic Plan - "... in 1996, the Service maintained over 35,000  
4 postal facilities and delivered more than 180 billion pieces of  
5 mail to nearly 130 households and businesses... The Results Act  
6 call for the Service to submit a strategic plan to the President  
7 and the Congress by September 30, 1997. The Service has engaged  
8 in strategic planning for several years using its current  
9 management system called 'Customer Perfect!'... to make  
10 improvements. This system includes four major phases: (1)  
11 establishing goals, (2) deploying resources toward achievement of  
12 those goals, (3) implementing improvement actions, and (4)  
13 reviewing performance and adjusting actions."

14 August 1998 the Postal Service leased a "temporary" 102,400  
15 square foot Priority Mail Annex located at 22430 Russell Road,  
16 Kent, Washington. This facility is 5 Miles from SeaTac Airport,  
17 no public transportation, no secure employee parking, no truck  
18 parking, no easy freeway access, poor heating and no air  
19 conditioning unlike the AMC. (exhibit 21)

20 1999 GAO report OCG-99-21 U.S. Postal Service Challenges -  
21 "... To carry out its mission, the Postal Service has nearly  
22 900,000 employees and maintains a national network of over 38,000  
23 post offices and postal facilities."

24 1999 GAO report GGD-99-23 Key Elements of Federal Building  
25 and Facility Partnerships - "... Agencies prepared business plans  
that address market conditions, public and private  
responsibilities, and project financing in order to make informed  
partnership decisions and to protect the government's  
interests... The federal real property disposal rules prohibit  
most agencies from using revenues from the lease or sale of  
excess properties."

March 1999 OIG report FA-AR-99-001 - "The audit disclosed  
that the Improvement Plan did not receive approval and oversight  
at the appropriate level and that approved deviations were costly  
to the USPS."

October 1999 OIG report CL-TR-00-001 - "The Postal Service is  
a \$60 billion business that relies on strong financial management  
to control costs and maximize revenues. The Postal Service

1 purchased \$8 billion in goods and services in Fiscal Year 1998  
2 through contracts. In addition, the Postal Service is one of  
3 America's largest owners, developers and managers of real estate.  
4 In Fiscal Year 1998, The Postal Service spent close to \$1.2  
5 billion for contracts to repair, renovate, and construct  
6 facilities."

7 2001 GAO report GAO-01-262 - "... more than 38,000 post  
8 offices, stations, and branches, and more than 360 major mail  
9 processing and distribution centers."

10 2001 OIG Report FA-AR-01-001, Authorization of Funds for  
11 Construction Projects; - "The audit found Facilities Service  
12 office personnel did not always prepare required Decision  
13 Analysis Report modifications ... Facilities Service office  
14 personnel were aware of the requirement to prepare a DAR  
15 modification when transferring funds between site and building  
16 investment categories. However, they circumvented this  
17 regulation and approved the transfer through a revised project  
18 authorization form."

19 August 2001 the Postal Service entered into an \$9.6 billion  
20 agreement with FedEx for the Shared Network Service Contract.  
21 Along with this agreement the Postal Service outsource the AMC's  
22 Terminal Handling Services (THS) to several companies at 80  
23 airports worth \$159 million(?), (exhibit 25). With the THS  
24 contracts the Postal Service is paying millions of dollars for  
25 the lease of the 80 facilities the THS contractors are in,  
(exhibit 26). This contract was challenged in court for  
violation of USPS's own procurement regulations and using flawed  
data. - "'Unfortunately, the parties have kept the details of  
this no-bid contract secret, so it's impossible to fully evaluate  
whether it is in the public interest,' said Rep. Tony Hall, D-  
Ohio. 'However, there is credible evidence that it won't provide  
the cost savings and service improvements that the Postal Service  
says it will.'" (exhibit 31).

1 9 August 2002, letter from USPS CFO Patrick Donahoe to the  
 2 Unions - "In order to decrease the number of unfair labor  
 3 practice charges, I would like to take this opportunity to  
 4 reaffirm the general principle that the unions are entitled to  
 5 all relevant and necessary information to perform their  
 6 obligations as the representative of bargaining unit employees."  
 7 (exhibit 34)

8 11 September 2002, Congressional Research Service Report for  
 9 Congress, page 7, **Legacy costs**. - "In addition to its debt to the  
 10 Treasury which will approach \$13 billion by the end of FY 2002,  
 11 GAO (02-355) also noted that USPS must pay \$32 billion in  
 12 retirements liabilities, \$15.8 billion interest expense on this  
 13 liability, \$6 billion in worker compensation claims, and an  
 14 obligation amounting to at least \$45 billion for retiree health  
 15 benefits that is not carried on the books though it should be.  
 16 These numbers will only grow in the future, and servicing these  
 17 debts for past delivery services will become an ever-greater  
 18 proportion of postage prices to be paid by future users of the  
 19 Postal Service (or by the taxpayer)... **Inadequate information.**  
 20 GAO, the PRC, and the USPS Inspector General (IG) have each  
 21 expressed frustration at the paucity of information USPS makes  
 22 available that would allow those outside the service to analyze  
 23 its financial condition and evaluate ways to improve it.  
 24 Unusually for a government entity ... GAO has questioned whether  
 25 USPS has 'reliable performance and cost information to  
effectively realizing anticipated cost savings' ... The IG  
 testified before the House Government Reform Committee on April 4,  
 2001 that USPS lacked information to justify major investments:  
 ..."

12 September 2002 GAO report GAO-02-916R USPS Accounting for  
 Postretirement Benefits - "... However, GAO recommended  
 disclosure of the full amount of the accrued benefits earned by  
 USPS employees and retirees in notes to its financial statements  
 to provide more complete information for making informed  
 judgments about USPS in dealing with oversight matters, assessing  
 rate change requests, and evaluating USPS's overall financial  
 position and performance... Unlike private sector employers,  
 USPS is statutorily prohibited from making variation, addition,  
 or substitution with respect to fringe benefits it would result  
 in a program for fringe benefits that on the whole is less  
 favorable to its officers and employees than fringe benefits in  
 effect on July 1, 1971... We believe decisionmakers' ability to  
 fully consider the impact of these obligations is hindered by the  
 current lack of recognition and disclosure to them in USPS's  
 financial statements."

January 2003 GAO report 03-205 Employee Issues Associated with the Potential Closure of the San Mateo IT Center - "... USPS plans to offer job assistance to management employees seeking nonpostal jobs. However, USPS does not plan to offer job assistance to union employees because such assistance is not covered by their collective bargaining agreement... The Investment Review and Approval Process requires that a Decision Analysis Report (DAR) be prepared as support for the investment. Additionally, the process requires that key senior postal executives approve the DAR... these approvals are the final steps in its Investment Review and Approval Process... plant and facility closures occur throughout the nation and generally result in negative economic and social impacts on employees and their families."

2003 GAO report 03-747 Vacant and Underutilized Federal Real Property shows that the Postal Service had 114 vacant and underutilized buildings and land. (Mostly land)

2003 - USPS five-Year Strategic Plan, page 42, Optimize Distribution Networks - "The Postal Service has initiated a Network Integration and Alignment (NIA) effort with a chapter to create a flexible processing and distribution system... The knowledge gained will serve as a critical tool in the decision-making process that will determine the shape, scope, and operational vision of the 21<sup>st</sup> century postal system." (exhibit 1)

3 February 2003, Comments to the President's Commission on the USPS submitted by Ruth Y. Goldway, Commissioner Postal Rate Commission - "... in the long run, the Service needs to be privatized and the letter and letterbox monopolies phased out... Local governments could be given the authority to decide who can provide the best and cheapest mail delivery service... (I do not mean substituting cheap labor for union jobs.) ... mail processing escalating from 6.2 percent of direct labor costs in 1969, the year before postal reorganization, to 31.4% in 1996... We all await detailed plans (not just the promises) to consolidate facilities and close unnecessary facilities... Privatization also is a means for the U.S. Government to recover the assets it gave away for free in 1970 to the current postal corporate entity. In a sense, those assets have been parked in escrow while the USPS has been given the free use of them... While there are 38,000 post offices... the Postal Service should be privatized or contracted out so that cash from the increased value of long-held properties could be generated or lease revenues maximized. The long-term strategic value of the USPS retail network and its community support function need a thorough analysis..."

1 March 2003 the Postal Service subleased to the Terminal Handling Services contractor Matheson Flight Extenders the ground floor (half) of the Transplex "G" Building at the SeaTac Airport for \$387,500 per year or \$15.50 a square foot (25,000 sqft). The Port of Seattle has a Tenant Contract with (1) Transplex International Inc., to manage the SeaTac Airport's warehouse buildings. So, (1) Port of Seattle lease to (2) Transplex Intl. who subleased to (3) SeaTac Air Cargo Limited, who subleased to the (4) Postal Service, who subleased half the building to the THS contractor (5) Matheson Intl. Each time there was a lease agent with his hand out. (exhibit 20)

September 2003 USPS Five-Year Strategic Plan, Network Optimization and Facility Utilization, page 42 - "The Postal Service's investment in computer-based network modeling has been important step forward in developing an understanding of system capacity and capabilities. The knowledge gained will serve as a critical tool in the decision-making process that will determine the shape, scope, and operational vision of the 21<sup>st</sup> century postal system." Facilities, page 52 - "... The Postal Service's facility-related requirements are currently being evaluated and prioritized with the particular focus on high growth areas, facility obsolescence, and necessary maintenance on real property assets." Performance-Based Culture Strategies, Page 57 - "Over the next five years, 63 percent of officers and executives, 46 percent of managers and supervisors, and 35 percent of all other employees will reach eligibility for regular retirement..."

November 2003 GAO report 05-48 - "... The U.S. Postal Service has over 800,000 employees and almost 38,000 facilities nationwide."

2004 OIG report CA-MA-04-002 - "The Postal Service is one of America's largest owners, developers, and managers of real estate. Its inventory includes over 37,500 buildings with more than 318 million square feet of owned and leased space... Postal Service area officials advised us they did not annually review their inventory of owned property because they were unaware of the requirement."



1 2005 OIG report CA-MA-04-005, "As of April 2004, the Postal  
2 Service owned 8,771 facilities and leased 28,337, totaling over  
318 million square feet." (37,108)

3 2006 Strategic Plan - page 15, Facilities - "A new program to  
4 increase revenue from the disposition of excess properties was  
5 established with a goal of \$2.2 billion in revenue over the next  
6 10 years." page 16, Evolutionary Network Development - "... A  
7 Network Alignment Implementation office was created at Postal  
8 Service Headquarters to direct network transition activities and  
9 coordinate the development of individual site plans for  
10 operational changes such as staffing, equipment, expansion, and  
11 mail flow and distribution changes... All but one of the 11 Area  
12 Mail Processing (AMP) proposals approved last year were  
13 implemented. One AMP proposal was approved in 2006 and 37 AMP  
14 feasibility studies are in progress. The Postal Service has  
15 enhanced the AMP stakeholder communications process to address  
16 community related concerns and provide more effective outreach.  
17 Handbook PO-408, Area Mail Processing Guidelines, is being  
18 revised to reflect these changes." page 17 - "The Postal Service  
19 notified employee organizations of plans to consider contracting  
20 operations at up to 43 AMCs." page 31 - "Each day managers in  
21 more than 29,000 Post Offices..." page 41 - "Complement and  
22 workforce related indicators are carefully tracked using the  
23 WebCOINS application which provides local management with timely  
24 and accurate complement information." (Note: 43 AMCs and 37 AMP  
25 studies.)

15 February 2006 Statement of Tom Samra, Vice President,  
16 Facilities, before the Committee on Federal Financial Management,  
17 - "In 1997, we initiated a focused asset management program. Its  
18 goal is to provide internal expertise to identify, analysis, and  
19 maximize the return on underutilized and surplus buildings and  
20 real estate. While it can be a challenge to realize the maximum  
21 market value from each property, the success of our asset  
22 management team has been remarkable. Since the program began,  
23 the Postal Service has realized gross revenues in excess of \$1  
24 billion through the lease or sale of unneeded property, with over  
25 \$700 million of this figure representing sales of more than 500  
properties." (\$1.4 million per facility, \$5 million estimate for  
new facility. \$3.6 million times 500 facilities is \$1.8 billion  
in lost Real Estate equity.)

23 3 February 2006 OIG report CA-MA-07-003, Background - "The  
24 OIG and the Supply Management Facilities Portfolio (SMFP) entered  
25 into an agreement on February 3, 2006, to develop and conduct  
work focused on the Facilities Service Offices' (FSO) use of the  
Parsons' indefinite quantity contract (# 512582-03-B-0005). The  
goals of the Value Proposition are to: 1. Assure suppliers and

1 responsible Postal Service personnel abide by the terms and  
 2 conditions of the contracts and Postal Service regulations. 2.  
 3 Reduce cost and ensure the efficiency and effectiveness of the  
 4 contracts. The SMFP mission is to provide purchasing leadership  
 5 for major facilities projects..." (A \$900 million 10 year  
 6 facilities consulting contract. The 2004 Area Budget Targets  
 7 shows \$5,482,096 projected for additional growth of facilities.  
 8 The Postal Service is spending \$90 million a year for a planning  
 9 contract for spending \$5.5 million a year to build (one?) new  
 10 facilities.)

11 6 February 2006 Statement of Tom Samra, VP Facilities, before  
 12 the Subcommittee on Federal Financial Management - "With more  
 13 than 34,000 Post Offices, processing plants, vehicle maintenance  
 14 facilities, and administrative offices, this requires  
 15 flexibility, responsiveness and a sharp eye on the bottom line.  
 16 Some 26,100 of these facilities are leased, and 8,400 are owned."  
 17 (34,500)

18 17 February 2006 Postal Service Outlines Plans for New  
 19 Network (DMNews) - "In an effort to meet future operational  
 20 needs, increase flexibility, and cut costs, within a year the  
 21 U.S. Postal Service will start phasing out facilities that handle  
 22 just one type of product, such as bulk mail centers and  
 23 international service centers. Instead, USPS will create  
 24 regional distribution centers focused on shape-based processing.  
 25 Paul Vogel, USPS vice president of network operations, said in a  
 media teleconference yesterday, "Our network is designed around  
 product or mail class, and our technology is designed around  
 shape... Now we have to bring those two concepts [together.]"

26 20 March 2006 OIG report NO-MA-06-001 Status on the  
 27 Evolutionary Network Development Initiative - "... The  
 28 infrastructure includes over 450 mail processing facilities,  
 29 along with one of the world's largest transportation networks  
 30 featuring some 215,000 vehicles and more than \$5 billion in  
 31 annual contracts for highway, air, rail, and water transport.  
 32 The President's Commission believes these operations are  
 33 inefficient and cost the Postal Service billions of dollars in  
 34 unnecessary expenses. The President's Commission called the END  
 35 initiative the most important deliverable in the Transformation  
 36 Plan. Postal Service management recognized the problem with its  
 37 infrastructure and the need to consolidate or close facilities,  
 38 and standardize and modernize those that remained. As part of  
 39 the Postal Service's Transformation Plan, they developed the END  
 40 initiative to optimize its processing and transportation network.  
 41 The END initiative contains processes and tools for analyzing the  
 42 optimal number, location, and functions of mail processing and  
 43 transportation facilities. The charter of END is to create a  
 44 flexible logistics network that reduces Postal Service and

1 customers' costs, increases operational effectiveness, and  
 2 improves consistency of service. The Postal Service's Strategic  
 3 Transformation Plan 2006-2010 states that efforts to create a  
 4 flexible network to increase productivity and effectiveness will  
 5 continue as an evolutionary process."

6 3 July 2006 letter to the Union - "This letter is to notify  
 7 you that the Postal Service is considering subcontracting the  
 8 tender and receipt of mail currently performed by bargaining unit  
 9 employees at the following 43 Air Mail Centers:... Any site  
 10 specific information about such employee impact will be developed  
 11 in each area, district, and when available, will be shared with  
 12 area and district union designees." (exhibit 3) (Note: 43 AMCs,  
 13 Seattle is on this list)

14 14 November 2006, the U.S. Department of Justice's U.S.  
 15 Attorney's office for District of Columbia issued the following  
 16 press release: - "The United States Government has reached a  
 17 \$10,000,000 settlement with former U.S. Postal Service (USPS)  
 18 contractor Emery Worldwide Airlines (Emery) concerning its  
 19 responsibility for the acts of Emery's employees in allegedly  
 20 knowingly inflated billings to the USPS for the handling of  
 21 Priority Mail at mail processing facilities during a multi-year  
 22 contract..." (exhibit 6)

23 Postal Service Accountability and Enhancement Act of December  
 24 20, 2006, Public Law 109-435, (Reference 39 U.S.C. 404).

25 22 December 2006, OIG report NL-AR-07-001, Airport Mail  
 Center Operations - "... network includes 59 airport mail  
 centers... Initial standardization plans anticipated that 52 of  
 the Postal Service's 59 AMCs would be converted into ATOs (Air  
 Transport Offices) over an 18-month period... In July 2006, the  
 Postal Service formally announced that it was considering  
 outsourcing the principal AMC core functions... The Atlanta AMC  
 was not one of the 52 AMCs designated for conversion to an ATO  
 under the Postal Services FY 2005 standardization initiative...  
no documentation to support staffing level... no productivity  
documentation to validate the managers' assessment..." (Note: 59  
 AMCs)

2007 OIG report SA-AR-07-006 as of June 15, 2007 the Postal  
 Service owned 8,479 facilities and leased 25,431 facilities.  
 (33,900)

June 2007 GAO report 07-717 Mail Processing Realignment  
 Efforts Under Way Need better integration and Explanation, page  
 44 Conclusion - "In our report 2 years ago, we concluded that  
 USPS did not have answers to important questions about how it  
 intended to realign its mail processing networks. This

conclusion still holds today... USPS remains unable to demonstrate to Congress and other stakeholders the costs and benefits of these initiatives. Further, data inconsistencies related to the AMP initiative have limited USPS's ability to identify potential impacts in its feasibility studies of proposed AMP consolidations... Stakeholder concerns related to the lack of clear and useful notification to stakeholders, coupled with lack of public input and transparency into USPS's AMP consolidation decision making, have contributed to public frustration with USPS's communication regarding its AMP consolidation decisions. USPS is currently developing Facilities Plan, mandated in legislation passed in December 2006, explaining how the network will be realigned and outlining how USPS will interact with stakeholders in making any changes...." Footnote 38 - "According to USPS officials, communication requirements would be modeled after the Worker Adjustment and Retraining Notification Act, Pub. L. No. 100-379 (29 U.S.C. 2101, et seq.)." (exhibit 7)

26 June 2007 GAO report 07-1083T Progress Made in Implementing Mail Processing Realignment Efforts, but Better Integration and Performance Measurement Still Needed, page 10, - "Table 1: Status and Purpose of Central Realignment initiatives; Area mail processing consolidations - In progress - "Increase efficiency and use of existing machine capacity by consolidating mail processing operations, (of the 57 potential consolidations USPS studied in 2005 and 2006, 10 have been implemented and most of the remaining will not be implemented)." Page 24 and 25, Appendix I: - "Status of USPS 2005 and 2006 AMP Consolidations:..." (as of May 2007). (Seattle Air Mail Center is not on the list.) (Note: 57 AMCs) (exhibit 8)

29 June 2007 Fiscal Year 2008 Final Area Expense Targets - "The fiscal year (FY) 2008 final area targets in support of corporate goals have been approved. The final budget (FBUD) includes area base downloads, breakthrough productivity initiatives, and operational programs, forecast volume, and delivery network impacts." Page 4 Program Name & No. - "20 Mail Processing Infrastructure (MPI) Phase 3 (EN-106)" (exhibit 11)

6 July 2007, the US District Court for the District of Columbia in APWU v. USPS, Civil Action No. 06-726 (CKK), in it the Union alleged that USPS violated 39 U.S.C. Section 3661 of the Postal Reorganization Act in developing the USPS' Evolutionary Network Development (END) program without the Postal Rate Commission's approval. The Court found that the claim - "is clearly moot unless USPS' alleged violation of Section 3661 is capable of repetition, yet evading review. The capable of repetition, yet evading review exception to the mootness doctrine applies where '(1) the challenged action was in its duration too



1 short to be fully litigated prior to its cessation or expiration,  
 2 and (2) there was a reasonable exception that the same  
 3 complaining party would be subject to the same action again.'  
 4 Weinstein v. Bradford, 423 U.S. 147, 149, 96 S.Ct. 347, 46 L. Ed.  
 5 2d 350 (1975)."

6 17 August 2007 Logistics All Hands Meeting, Page 2 -  
 7 "Coordinated with Commercial Air Operations to identify the core  
 8 stakeholder functions required for executing the administrative  
 9 action for AMC/AMF deactivation by Area Distribution Networks."  
 10 Page 3 - "Co-coordinated workgroup meeting with stakeholder steps  
 11 and activities necessary to support Area Distribution Network  
 12 execution of AMC/AMF deactivation. - Documented and validated  
 13 the individual functional process flows with stakeholder  
 14 representatives. - Designed and developed the 'macro-level'  
 15 functional process management flow diagram for AMC/AMF  
 16 deactivation ..." Page 8 - "AMCs Closed - 43 -- AMC Pending  
 17 Closures - 25..." (Note: 65 AMCs) (exhibit 28)

18 September 2007 Supply Management investment Recovery Plan,  
 19 Page 4 - "3. Ensure investment recovery is included in the  
 20 development of a standard plant closing plan and plant  
 21 consolidation plan (including post offices and facility plan).  
 22 6. Develop a revenue and expense model to include cost of  
 23 operation; i.e. transportation, warehousing, packing, finance,  
 24 data collection and labor costs." Page 5 - "Goal 4. Define the  
 25 geographic Redistribution Centers and establish a network  
 system." (Exhibit 29)

December 2007 GAO report 08-41 - "To address the challenge of  
 capturing and maintaining accurate facility management data, the  
 Postal Service developed the Facility Database, but the database  
 does not conform to the Postal Service's goals or to leading  
 federal practices; specifically, it does not include data needed  
 to measure performance on managing facilities or have the  
 capacity to track such data over time. Further, a data base  
 analysis by GAO revealed data reliability problems, including  
 duplicative and contradictory data. In addition, major Postal  
 Service departments do not use the database as a consolidated  
 data source for managing postal facilities..."

2008 OIG Report SA-RA-08-004, Postal Service Single Source  
 Provider System, Results: - "... our review identified management  
control weaknesses as follows: FSOs do not consistently manage  
 repair calls through the FFSP. FSOs do not adequately track the  
 expenditures charged to the repairs and alterations budget line.  
 FSOs do not adequately control FKC invoicing and payments. Data  
 in the FFSP system is not reliable... One FSO did not accept  
 routine calls... other three did not... FSO bypassed the FSSP...  
 Thirty-three of the 115 emergency or urgent FSSP calls we

1 reviewed had been open for over a year... FSOs were inconsistent."

2 24 January 2008 OIG report FT-AR-08-005 New York  
3 International Service Center, - "... Volume data used to bill  
4 foreign postal administrations in inbound Express Mail service  
5 was not always accurate. We found errors in 97 of 120 items  
6 review for China. For all other countries, we found errors in 57  
7 of 78 items reviewed."

8 March 2008 USPS Handbook PO-408 (revised) Area Mail  
9 Processing Guidelines 1-1.1 - "Area mail processing (AMP) is the  
10 consolidation of all originating and/or destinating distribution  
11 operations from one or more Post Offices/facilities into other  
12 automated processing facilities for the purpose of improving  
13 operational efficiency and/or service." 2-6 Supporting  
14 Documentation: - "1. Operating plans... 2. Reports ... 3.  
15 Analyses ... 4. Copies of communications to stakeholders ... 5.  
16 Any other reports ... 6. Impact statement ... 7. AMP  
17 worksheets..." 3-4.1 District Responsibilities: - "1.  
18 Management must review all worksheets ... 2. Management must  
19 retain copies ... 3. The district manager has overall  
20 responsibility for the public input meeting ..." 3-4.3  
21 Headquarters Responsibilities: - "1. ...review ... 2. ... review  
22 3. The SVP Operations make the final decision for the  
23 consolidation of mail processing operations. Notice of the final  
24 decision will be sent to the AVP... 4. For approved AMP  
25 proposals, the manager NAI maintains oversight through the post-  
implementation reviews." 4-2 Responsibilities - "District and  
plant management in each affected location, with support from  
their local area Public Affairs and Communication personnel, have  
lead responsibility for communicating to employees and  
customers..." 4-3 - "AMP is affected by the Postal Service  
Accountability and Enhancement Act, which became effective  
December 20, 2006. Specifically, the Postal Service must do the  
following: 1. Provide adequate public notice to communities  
affected ... 2. Make available information about any service  
changes ... 3. Afford affected persons ample opportunity to  
provide input on the proposed decision. 4. Take such comments  
into account in making a final decision." 4-4 Communication  
Plan Overview - "The objective of the AMP Communication Plan is  
to communicate effectively to the public and Postal Service  
employees the fact that consolidation of operations improves  
efficiency and/or service..." 5-1 - "To prepare the business case  
for consolidation of operations, area mail processing (AMP)  
coordinators must obtain AMP worksheets and other information  
online at ..." (exhibit 17)

24 5 March 2008 Statement of Postmaster General John E. Potter -  
25 "... Our personnel policies and procedures are designed to treat  
employees in a fair, equitable and objective manner... The PAEA

1 acknowledged the need for the Postal Service to streamline its  
2 distribution network and to rationalize the postal facilities  
3 network... The Network Plan that we submitted to Congress is not  
4 the last word on these programs." (exhibit 24)

5 23 April 2008 the Postal Service renewed the lease agreement  
6 for the for the "temporary" 102,400 square foot Priority Mail  
7 Annex located in Kent, Washington for \$723,395 a year or \$7.06 a  
8 square foot. page 4 - "The terms of the proposed lease do not  
9 allow early termination of the lease by either party." page 5 -  
10 "There are no nearby Postal Service facilities with sufficient  
11 space available to house the operations currently located at the  
12 Priority Mail Annex... The existing facility is not on any  
13 Headquarters capital plan for replacement." (exhibit 21) (USPS  
14 Active Projects as of 5/9/2009 Seattle, WA L&DC (Logistics and  
15 Distribution Center) (exhibit 23).) (Note: The PMA is located  
16 in between a river and wet lands (mosquitoes) and has no air  
17 conditioning (except in the management offices). Millions of  
18 dollars was spent upgrading the AMC with Air conditioning. The  
19 Postal Service also leases three buildings at the SeaTac  
20 airport's north cargo Transiplex #15, #16, and #19 for  
21 contractors (exhibit 30).)

22 June 2008, USPS Section 302 Network Plan, page 4 -  
23 "Subchapter VII of the Postal Accountability and Enhancement Act  
24 (PAEA), Public Law 109-435, 120 Stat 3198, specifies three  
25 objectives, ...third is the submission to Congress of this  
26 Network Plan... - over 400 mail processing plants and related  
27 logistics and transfer facilities, over 37,000 Post Office  
28 locations..." page 5 - "... Before making any decisions, the  
29 Postal Service will employ its recently enhanced Area Mail  
30 Processing (AMP) guidelines to assess the feasibility of local  
31 consolidation opportunities..." page 20 - "The Postal Service

1 terminated operations at the following 46 AMCs during FYs 2006-  
 2 2007: ... In addition, the Postal Service already has terminated  
 3 operations at the following eight AMCs in FY 2008: ..." (Seattle  
 4 is not on the list.) page 21 - "Total program savings are  
 5 expected to be \$117 million from the elimination of workhours and  
 6 facilities lease expenses... Network of 37,000 Post Office  
 7 units..." page 22 - "... approximately 400 relatively large mail  
 8 processing plants... The Postal Service has employed its AMP  
 9 guidelines to analyze locally generated proposals for the  
 10 consolidation of all originating and/or destinating distribution  
 11 operations from one facility to another. These procedures have  
 12 been updated recently and are published in the form of USPS  
 Handbook PO-408 Area Mail Processing Guidelines (March 2008).  
 page 25 - The District Manager is required to conduct a public  
 input meeting." page 27 - "Accordingly, consistent with the  
 requirements of PSEA section 302(c)(3)(D), the Postal Service has  
 developed a detailed AMP Communications Plan ... AMP feasibility  
 study, information on consolidation proposal and public meeting,  
 and the final decision ..." page 29 - "The specific impacts on  
 postal costs, postal employees and customer service will be  
 identified during the AMP process and communicated in accordance  
 with the Postal Service AMP Communications Plan." (Note: 54  
 AMCs) (exhibit 4)

13 July 2008, GAO report 08-787 - "The Service does not have a  
 14 comprehensive mechanism for measuring results, including any  
 15 actual savings; therefore, it could not provide information on  
 16 the effectiveness of its outsourcing. Without cost-savings data,  
 17 postal managers, stakeholders and Congress cannot assess the risk  
 and value of outsourcing... Overall, the Service could not  
 provide information on the total extent of its outsourcing  
 activities that impacted bargaining unit work because the  
 contracts related to bargaining unit work are not separately  
 tracked."

18 16 July 2008 OIG report EN-AR-08-004 - "Management did not  
 19 conduct a post-implementation review (PIR) after outsourcing the  
 20 Miami AMC to determine whether the out sourcing was cost-  
 21 effective. The Postal Service had not established post-  
 22 implementation guidance at the time the outsourcing was  
 23 initiated. In a previous AMC outsourcing report, we recommended  
 Postal Service Headquarters management develop a PIR process, and  
 they are currently developing guidance. Without a review, there  
 is no assurance that the outsourcing initiative achieved  
 anticipated results."

24 24 July 2008 Statement of Deputy PM Patrick R. Donahoe,  
 25 before the Subcommittee on Federal Workforce, - "Today's mail  
 processing network is comprised of more than 400 mail processing  
plants... over 37,000 post offices..."



1 24 July 2008, GAO report 08-1022T - "In its June 2008 Network  
 2 Plan, USPS clarified how it makes realignment decisions, and  
 3 generally addressed how it integrates its realignment  
 4 initiatives. However, USPS has not established measurable  
 5 performance targets for its realignment initiatives... Going  
 6 forward, it will be crucial that USPS establishes and maintains  
 7 an ongoing and open dialogue with stakeholders... who have  
 8 questions or are concerned about the proposed realignment  
 9 changes."

10 1 August 2008 the Postal Service leased for 15 months office  
 11 space downtown Seattle for the Postal Inspection Service (IS)  
 12 Inspectors at a cost of \$700,000 while their office space in the  
 13 Main Post Office under went a \$7.4 million renovated. Page 2 -  
 14 "There are also no USPS facilities in the immediate are that can  
 15 accommodate the IS function." (exhibit 22) (43,109 square foot  
 16 building and \$7.4 million spent is \$171 a square foot.) (There  
 17 is office space that Inspection Service abandoned in 2001 that  
 18 was used to host the Postal Police (removed) at the P&DC (leased)  
 19 that also has an active Inspection Service office 10 minutes from  
 20 downtown Seattle. The AMC (owned) with office space is 20  
 21 minutes from downtown.)

22 30 September 2008, OIG report NL-AR-08-009 Air Networks -  
 23 Dallas Airport Mail Center - "The Dallas AMC operated at lower  
 24 efficiency levels as compared to national productivity standards  
 25 or similar operations at other facilities; misaligned some  
 workhours with workload; and performed some unnecessary work...  
 management did not enforce standards and productivity data was  
 inadequate or did not exist. Consequently managers did not have  
 the tools to control operations..."

September 2008 GAO report 08-966 New Delivery Performance  
 Measures Could Enhance Manager's Pay for Performance Program -  
 "As USPS implements requirements of the postal reform law for  
 measuring delivery performance, it will have opportunities to  
 incorporate new indicators into its PFP program ... that uses  
service performance metrics for the mail that is measured to

support personal and unit accountability."

25 September 2008 GAO report 08-113R Postal Network Realignment - "This network includes over 600 facilities that sort mail and prepare it for transportation and delivery... One such initiative, area mail processing, is designed to consolidate operations at facilities with excess machine capacity..." Page 3 - "To strengthen its planning and communications, in June 2008, USPS issued its Network Plan. This plan, mandated by the Postal Accountability and Enhancement Act of 2006 (PAEA), was to include USPS's long-term vision... and USPS's communication procedures for AMP consolidations. USPS has additional legislative requirements to meet before moving forward with AMP consolidations... the Consolidated Appropriations Act for fiscal year 2008, restricts USPS from implementing additional AMP consolidations until ...." Page 10 - "... Going forward, it will be crucial for USPS to establish and maintain an ongoing and open dialogue with its various stakeholders, including congressional oversight..." (exhibit 9)

FYs 2009-2013 Capital Budget Technical Package Guidelines II. Page 3, Transformation Plan Strategies F. - "To emphasize the need for facilities and equipment designed to provide desirable working conditions for U.S. Postal Service (USPS) employees, a maximum convenience for efficient Postal Service, proper access to existing and future air and surface transportation facilities, and control of costs by the Postal Service." Page 6, IV. D. - "A Mail Processing Project Initiation Sheet (MPPIS) for all Line 62 Processing and Distribution Facility projects must be submitted to Facilities Planning, Policies and Programs for functional review and prioritization." Page 22, - "The need for Major Mail Processing Facilities is impacted by various network strategies. The following projects are scheduled for continued planning, site purchase, design and construction in FY 2009: ... SEATTLE, WA - L&DC NCO... Logistics and Distribution Center (L&DC) New Construction (NCO) (exhibit 18)

20 March 2009 USPS News Link Extra - "Today the Postal Service has announced it will close six of its 80 district offices... USPS will reduce administrative staff positions at the district level nationwide by 15 percent. In addition, more than 1,400 mail processing supervisors and management positions at nearly 400 facilities around the country will be eliminated and nearly 150,000 employees nationwide are being given the opportunity to take an early retirement...." (exhibit 32)

5 April 2009 APWU union letter - "Many clerks have been asking me what is the latest information on management's plans for the Clerk Craft due to the projected closing of the AMC and due to the decline in mail volume. Management hasn't provided or

1 discussed any specific plans for any clerk craft changes,  
2 abolishments, or excessing, etc. The union has requested all  
3 documentation and plans, but as of today management hasn't  
4 provided any details for the closure of the AMC." (exhibit 33)

5 20 May 2009 GAO report 09-674T Network Rightsizing Needed to  
6 Help Keep USPS Financially Viable - "... USPS has made limited  
7 progress in rightsizing its networks... USPS has consolidated  
8 operations through attrition and currently has about 160,000  
9 employees eligible for retirement..." Page 9 - "USPS can  
10 streamline its network of close to 37,000 post offices, branches,  
11 and stations - a network that has remained largely static ... We  
12 also found that USPS has a maintenance backlog for its retail  
13 facilities, including facilities that we visited which had  
14 chronically leaking roofs and visible interior and exterior  
15 damage. USPS officials stated that USPS has historically  
16 underfunded its maintenance needs and insufficient funding has  
17 caused USPS to focus on reactive maintenance..." Page 16 -  
18 "Appendix II: Status of 2008-2009 Proposed Area Mail Processing  
19 Consolidations as of May 15, 2009, Total AMP proposals: 33..."  
20 (Seattle is not on the list) (exhibit 10)

#### 21 Freedom of Information Act

22 Title 5 section 552(4)(B) - "On complaint, the district court  
23 of the United States in the district in which the complainant  
24 resides, ... has jurisdiction to enjoin the agency from  
25 withholding agency records and to order the production of any  
agency records improperly withheld from the complainant... (b) of  
this section, and the burden is on the agency to sustain its  
action."

I attended a Labor/Management meeting along with the American  
Postal Workers Union Officials about the closing of the SeaTac  
Air Mail Center on 27 March 2009. I attended the meeting just to  
get a copy of the approved Area Mail Processing Plan that no one  
had seen (meeting minutes, exhibit 15). Page 2 - "The Management  
promised to provide documents other than the ones passed around

1 at this meeting." The meeting was headed by Seattle Processing  
2 and Distribution Manager Don Jacobus who opening statement, page  
3 3 - "This meeting is to give you the most updated information  
4 regarding AMC closure, but this is not a meeting of negotiations  
5 or signing of agreements." Page 4 - "Some questions were raised  
6 and Jacobus said, 'We are going out of business.'" (exhibit 15)

7 I asked at the beginning of the meeting to see a copy of the  
8 approved Area Mail Processing Plan that directed the closure of  
9 the AMC and was told to save questions for later. Every time  
10 management stated that they did an "analysis" or made a final  
11 "closure date" for the AMC (page 4) I asked for a copy and was  
12 given none. At the end of the meeting I again asked for a copy  
13 of the approved Area Mail Processing Plan closing the AMC and I  
14 was told there was none. When I told the Plant Manager Don  
15 Jacobus that he had the legal obligation under the Postal  
16 Accountability Act and USPS Handbook PO-408 to provide an  
17 approved AMP Plan he told me - "YOU HAVE TO TALK TO MY ATTORNEY"  
18 (Page 5 question 16 exhibit 15).

19 1 May 2009 letter from the APWU President - "As of April 28,  
20 2009, joint labor and management negotiations regarding Seattle  
21 District's planned AMC closure and Seattle P&DC realignment has  
22 stalled until further notice... I will not give up the union's  
23 right to file future grievances if violations should occur  
24 because management's proposed plans did not work. History will  
25 show many of management's plans failed miserably... But for

1 management to demand that we withdraw the AMC Realignment  
2 grievances that were filed two years ago; to give up all RFI  
3 (Request for Information) items that have not been provided so  
4 that the union can properly investigate possible contract  
5 violations, and to waive present and future grievances is absurd  
6 and downright bad faith bargaining!" (exhibit 16)

7 4 May 2009, I along with American Postal Workers Union  
8 officials met with the Mayor of SeaTac, Ralph Shape, and the City  
9 Manager, Craig Ward, about the closing of the Air Mail Center in  
10 their Community. I informed the Mayor that no public notice had  
11 been given and no public meeting had been held. I informed them  
12 that there was no feasibility study or approved Area Mail  
13 Processing Plan (exhibit 12). After the meeting the Mayor called  
14 the Seattle District Manager Katherine Nash and then sent me a  
15 letter (exhibit 13) about the response letter from Katherine  
16 Nash. Katherine Nash wrote that - "... Since our conversation I  
17 followed up by verifying our regulations in the Postal Operations  
18 Manual and contacting our facilities unit for the Western Area.  
19 As I suspected notice to city officials is mandatory only when  
20 the United States Postal Service discontinues a post office  
21 station or branch...." (exhibit 14)

22 Employee Retirement Insurance Savings Act

23 "Claims alleging interference with employment benefits in  
24 violation of ERISA related to outsourcing of jobs are analyzed  
25 under the *McDonald Douglas* burden shifting framework; if

1 employees show a prima facie case of violation of ERISA, the  
 2 burden shifts to the Employer..." Register v. Honeywell Federal  
 3 Manufacturing & Technologies, LLC., C.A.8 (Mo) 2005, 397 F.3d  
 4 1130 (exhibit 2, #82)

5 Postal Accountability and Enhancement Act

6 Postal Accountability and Enhancement Act of Dec. 20, 2006,  
 7 Public Law 109-435, (Reference 39 U.S.C. 404)

8 Title 39 section 404(d)(3) - "Any determination of the Postal  
 9 Service to close or consolidate a post office shall be in writing  
 and shall include the findings of the Postal Service with respect  
 to the considerations required to be made ..."

10 39 CFR 273.1 - "This part establishes procedures for imposing  
 11 civil penalties and assessments un the Program Fraud Civil  
 Remedies Act of 1986 (codified at 31 USC 3801-3812) against any  
 12 person who makes, submits, or presents, or causes to be made,  
 submitted, or presented, a false fictitious, or fraudulent claim  
 13 or written statement to the Postal Service." 273.2 (a) "Claim  
 means any request, demand or submission." 273.3 (i) "is false,  
 14 fictitious, or fraudulent or (ii) Includes or is supported by any  
written statement asserting a material fact which is false.."

15 Title 39 section 778.4 (a) - "The Postal Service provides  
 16 opportunities for consultation by elected officials of those  
 state and local governments that would be directly affected by  
 the Postal Service's facility project plans..." 778.8 (a) -  
 17 "Except in unusual circumstances, the Postal Service gives state  
 processes or directly affected state, areawide, regional and  
 18 local officials and entitles: (2) At least 60 days from the  
 date established by the Postal Service to comment on proposed  
 19 facility projects actions..."

20 Title 39 section 2802 Strategic Plans (d) - "When developing  
 21 a strategic plan, the Postal Service shall solicit and consider  
 the views and suggestions of those entities potentially affected  
 by or interested in such plan, and shall advise the Congress of  
 22 the contents of the plan."

23 Title 39 section 2803 Performance Plans (a) - "The Postal  
 24 Service shall prepare an annual performance plan covering each  
 program activity set forth in the Postal Service budget..."



1 Title 39 section 2805 Inherently Governmental Functions -  
 2 "The functions and activities of this chapter shall be considered  
 3 to be inherently Governmental functions. The drafting of  
strategic plans, performance plans, and program performance  
reports under this section shall be performed only by employees  
of the Postal Service."

4 Title 39 section 3691 Postal Service Plan (c)(5) - "Existing  
 5 efforts - Effective on the date of this Act (Dec. 20, 2006). the  
 6 Postal Service may not close or consolidate any processing or  
logistics facilities without using the procedures for public  
notice and input consistent with those described under paragraph  
(3)(d)." (3)(d) - "procedures that the Postal Service will use  
 7 to - (i) provide adequate public notice to communities ... (ii)  
 8 make information available... (iii) afford affected persons ample  
 9 opportunity... (iv) take comments into account in making a final  
 10 decision."

11 Federal Property and Administrative Services Act of 1949  
 12 section 313, enhanced at 41 USC 263 require agencies to achieve  
 13 on average 90% of the cost, performance, and schedule goals for  
 14 major acquisition program. Section 204 directed that proceeds of  
 15 the sale of Federal property must be set aside by GSA in a  
 16 separated special fund in the Treasury (40 USC 485).

17 Title 41 Section 205 (40 USC 486) (a) "The President may  
 18 prescribe such policies and directives, not inconsistent with the  
 19 provisions of this Act, which policies and directives shall  
 20 govern the Administrator and executives agencies in carrying out  
 21 their respective functions hereunder."

22 Title 41 section 263 Public Contracts, established  
 23 Congressional Policy that - "the head of each executive agency  
 24 should achieve, on average, 90 percent of the cost, performance,  
 25 and schedule goals established for major acquisition programs of  
 the agency. (A) relates pay to performance." The Postal Service  
 has failed to achieve the lawful goal %90 goal of building  
 ownership. Who is in charge or accountable and did they get

1 their performance bonus?

2 Title 40 section 3304, requires that the GSA Administrator  
3 and the Postal Service to act "jointly" in selecting public  
4 buildings. Further, section 3304 requires that the select site  
5 be "most advantageous to the Government". Presidential Directive  
6 under Title 40 section 121, also requires that the Administrator  
7 of General Services "Issue regulations, periodically undertake  
8 surveys and ensure cooperation with the heads of Executive  
9 agencies."

10 Under the Reorganization Plan of 1950 incorporated in Title  
11 40 section 301, to establish:

12 "...far-reaching changes which directed the released of  
13 rented buildings and greatly reduced the cost of the Government  
14 establishment. Similar procedures applied in the larger center  
of field activity should produce substantial savings."

15 - President Harry S. Truman.

16 In 1970 Congress gave the Postal Service several billion  
17 dollars in assets of facilities and equipment owed by GSA used by  
18 the former Postal Department and another billion dollar bailout  
19 in 1975. Before 1970 the GSA owned 27,000 postal facilities that  
20 Congress told GSA to handover the title to the Postal Service  
21 pursuant to the Postal Reorganization Act. The Comptroller  
22 General report to the Subcommittee on Treasury, Post Office, and  
23 Executive Office Committee on Appropriations United States  
24 Senate, March 1971, found that "decisions as to whether to  
25 construct or lease a facility would based on the evaluations



1 made...".

2 Executive Order 11672, 6 Jun 72, 37 F.R. 11455, Title 39  
3 section 2002, conferred to the GSA and the Director of OMB that  
4 property transferred to the Postal Service at fair market value  
5 "unless a different basis of valuation is more equitable or  
6 better serves the public interest."

7 Direct testimony of William P. Tayman JR., General Manager  
8 Office of Accounting, before the PRC docket number R2001-1, on  
9 page 55 (e) Postal Service Assets Do Not Protect Against  
10 Financial Risk - "The only real source of long-range financial  
11 security is equity. But this is instead a source of concern for  
12 the Postal Service because our equity is negative estimated to be  
13 \$6.7 billion below its starting value going into the test year."

14 \$6.7 billion lost in one year. On page 67 (j) Recovery of Prior  
15 Years' Losses - "At this point, prior years, losses have entirely  
16 consumed the Postal Service's equity. ... The BOG adopted Board  
17 Resolution 95-9. This directs the Postal Service to plan for net  
18 incomes of a rate cycle which cumulatively will result in  
19 recovery of prior years' losses... The Postal Service is committed  
20 to restoring past losses, as the Board affirmed in that  
21 Resolution." Mr. Tayman stated on page 46 that the Postal  
22 Service would need to add 40 new facilities a year at \$5 million  
23 a facility to meet the network growth. \$5 million times the  
24 17,000 facilities sold by the Postal Service is \$105 billion in  
25 equity lost for Federal Buildings. The Service has sold 277

1 facilities a year for the last 39 years. The Postal Service  
2 leases 28,536+ buildings and land. That is leasing 717 a year  
3 for 39 years. In comparison the Federal Government through GSA  
4 owned 411,000 Buildings and leased 45,000 buildings which is \$11  
5 leased in 2004.

6 Remarks by Postmaster General John E. Potter to the  
7 Presidential Commission on the USPS, 8 Jan 03, "The point is the  
8 Postal Service made a strategic decision not to own everything."

9 Leasing facilities is more costly when the fact of paying  
10 property taxes is taken into account. Other estimates is that  
11 the Postal Service is now paying 9 Billion dollars in leases  
12 being paid a year means that \$228.6 million (2.54%) are being  
13 paid in property taxes that would not be paid if the property was  
14 owned by a Federal Agency. 500 million dollars in business taxes  
15 are being paid in-directly by the Postal Service through business  
16 profit taxes.

17 Postal Service Facts; - "Leases 25,772 facilities ...  
18 providing tax revenue to thousands of communities." The standard  
19 business accounting term for this is "taking from Peter to give  
20 to Paul". The Public's loss is the Property Owner's  
21 (Stakeholder) gain. Taking into account the Billions of federal  
22 dollars spent on improving lease facilities makes it a double  
23 loss to the American Public who gave \$1.3 billion in Capital  
24 Property assets in 1970 to the Postal Service with the Title 40  
25 section 571, Public Buildings rule that if the Postal Service did  
not need the facilities and sold them the money would be return

1 to the Federal Government's Special Fund for facilities.

2 The Association of United States Postal Lessors (AUSPL) is  
3 the largest association for postal lessors, currently serving  
4 more than 3,500 members nationwide since 1981. Some members  
5 owned 80-175 (Dawn Bowman) properties that are custom built for  
6 and leased to USPS for a profit. One member, Rick Austin,  
7 handles the insurance for more than 7,000 properties valued at  
8 over \$2.8 billion. Lawrence Schlager was instrumental in getting  
9 the Postal Service to assume responsibility for maintenance and  
10 taxes easing the burden of lessors by reducing a proportional  
11 share of the base rent (PMA lease \$149,663 per year, exhibit 21  
12 page 4). The AUSPL Subcommittee presented its recommendations  
13 (slated view) to the President's Commission on USPS relating to  
14 the consolidation and rationalization of the mail processing and  
15 distribution infrastructure. - "Further, the Subcommittee  
16 strongly encourages the Postal Service to use its current  
17 statutory flexibility to dispose of real estate assets to  
18 strengthen the Postal Service's long-term financial position."  
19 Title 39 section 401 General Powers of the Postal Service (5)  
20 gives the Postal Service the authority to sell real property but  
21 not the authority to use the funds from the sale for "revenue"  
22 purposes.

23 Title 39 Section 2002 Capital of the Postal Service (a)(1) -  
24 "... The value recorded on the former Post Office Department's  
25 books of account shall be prima facie evidence of asset value."  
(d) - "After commencement of operations of the Postal Service,  
the President is authorized to transfer to the Postal Service,

1 and the Postal Service is authorized to transfer to other  
2 departments..." (Nothing about selling facilities.)

3 Title 39 section 2003 The Postal Service Fund - "(b) Except as  
4 otherwise provided in section 2011, there shall be deposited in  
5 the Fund, subject to withdrawal by check by the Postal  
6 Service - (1) revenues from postal and nonpostal services..."  
7 (Nothing about putting the funds from the sale of Capital Assets  
8 into the Postal Service fund.)

9 Title 40 section 571; "(1) In general - Except as otherwise  
10 provided in this subchapter, proceeds described in paragraph (2)  
11 shall be deposited in the Treasury as miscellaneous receipts."

12 Title 40 section 572; "(4) Report - A report of receipts,  
13 disbursements, and transfers to miscellaneous receipts under this  
14 subsection shall be made annually, in connection with the budget  
15 estimate, to the Director and to Congress."

16 The Postal Service does not deposit the facility sale money  
17 into the Treasury or put it into a separate building fund and  
18 does not report it to Congress.

19 The Postal Service claims that it has 34,000-39,000 post  
20 offices. The USPS Facility Address Mail List of Active  
21 Facilities shows 33,229 facility addresses. GAO report GGD-89-11  
22 shows that 30% (9,996) of these post offices are non-revenue  
23 producing maintenance, warehouses, processing and administrative  
24 facilities (exhibit 5 page 8).

25 The Postal Service claims that it has 300-600 Mail Processing  
Facilities. The USPS Processing and Distribution Center  
directory lists 369 P&DCs. (exhibit 35)

The Postal Service had 43-65 AMCs, but gave out 80 THS  
contracts for the core work the AMCs were doing putting the mail  
on the planes (exhibit 25).

GAO table 1105 U.S. Postal Service summary shows a peak of

1 40,067 facilities in 1990 and a 2005 count of 37,142 facilities.  
 2 What happened to 2,925 facilities when mail volume went from  
 3 166,301 million pieces in 1990 to 211,743 million in 2005? Where  
 4 is any accurate information on 34,000-39,000+/- owed and leased  
 5 facilities?

#### 6 CONSIDERATION

7 United States Constitution Amendment XIV Section 1. - "All  
 8 persons born or naturalized in the United States, and subject to  
 9 the jurisdiction thereof, are citizens of the United States and  
 10 of the state wherein they reside. No state shall make or enforce  
 11 any law which shall abridge the privileges or immunities of  
 citizens of the United States; nor shall any state deprive any  
 person of life, liberty, or property, without due process of law;  
 nor deny to any person within its jurisdiction the equal  
 protection of the laws."

#### 12 Statutes

13 Title 39 section 410 References in Text - "Service Contract  
 14 Act of Oct. 22, 1965 (title 41) - Civil Rights Act of July 2,  
 15 1964 (title 42) - Occupational Safety and Health Act of Dec. 29,  
 1970 (title 29) - Reorganization Plan numbered 14 of May 24, 1950  
 (title 5)."

16 Title 42 section 1983 - "... or causes to be subjected, any  
 17 citizen of the United States or other person within the  
 18 jurisdiction thereof to the deprivation of any rights,  
 19 privileges, or immunities secured by the Constitution and laws,  
 20 shall be liable to the party injured in an action at law..." Civil  
 21 Procedure, A Modern Approach, 2d, 1995, page 186. - "This  
 statute, enacted to aid in 'the preservation of human liberty and  
 human right,' reflects a congressional judgment that a 'damages  
 remedy against the offending party is a vital component of any  
 scheme for vindicating cherished constitutional guarantees'."

22 Title 40 section 3304 United States Postal Service - Public  
 23 Buildings Act of 1959 - Federal Property and Administrative  
 Services Act of 1949.

24 Title 31 section 3802 (a)(1) "Any person who makes,  
 25 presents, or submits, or causes to be made, presented, or  
 submitted, a claim that the person knows or has reason to know -  
 (A) is false, fictitious, or fraudulent..."



1 USPS Handbook PO-408 Area Mail Processing Guidelines, March  
2 2008 (exhibit 17).

3 The Postal Operations Manual (POM); 425 Air Mail  
4 Center/Facility "An air mail center/facility (AMC/AMF) is a  
5 postal facility located at or adjacent to an airport. The AMC/AMF  
6 core operations..." Postal Service Operations Manual 422 Area  
7 Offices - "Operations Support in the area offices will review all  
8 plans submitted by the customer service processing facilities,  
9 air mail centers/facilities (AMC/Fs), and bulk mail centers  
10 (BMCs) for completeness and compatibility with long-range mail  
11 processing and delivery needs of the area. In-Plant Support  
12 reviews and approves all operating plans..." 424.2 Operating Plan  
13 Review - "P&DCs review all standard operating plans submitted by  
14 their P&DFs for completeness and compatibility with the long-  
15 range mail processing and delivery needs of the center's area of  
16 responsibility. The P&DC submits appropriate plans in a complete  
17 package to the area office."

18 Administrative Support Manual (ASM) 327 - "Certain completed  
19 forms become official Postal Service records having legal and  
20 contractual implications."

21 Employee and Labor Relations Manual (ELM) 661.21  
22 Congressional Code of Ethics for Government Service, Any person  
23 in government service should: 9. - "Expose corruption whenever  
24 discovered." 665.14 Reporting Violations - "All allegations of  
25 violations of Postal Service laws or misconduct by Postal Service  
employees, including mail theft, must be reported..."

Employee Labor Relations Manual (ELM) 612 Information Media,  
612.1 Responsibility; - "Supervisors inform their employees on  
all official matters affecting them through printed material of  
bulletin boards." 612.231 - "Bulletin boards serve as a means of  
providing to employees information of interest, such as that  
required by law of regulation, official management information,  
and items of general interest."

#### Litigation

The Court found in Coca-Cola Bottling Co, v. Coca-Cola Co.,  
107 F.R.D. 288 (D.Del.1989) - "On the other hand, unless  
defendant is required to respond to plaintiff's discovery,  
plaintiffs will be unable to learn whether defendant has done  
them a wrong. Except for a few privileged matters, nothing is  
sacred in civil ligation."

York, Bauman & Rrandleman Remedies 4<sup>th</sup> Ed. ACB, C. Undue



1 Influence - "... The kind of influence or supremacy of one mind  
2 over another by which that other is prevented from as acting  
3 according to his own wish or judgment... Undue influence involves a  
4 type of mismatch which our statute calls unfair advantage. (Civ.  
5 Code section 1575)."

6 Federal Express Corp. V. Holowecki, No. 06-1322, 1(b) - "Just  
7 as this Court defers to reasonable statutory interpretations, an  
8 agency is entitled to deference when it adopts a reasonable  
9 interpretation of its regulations, unless its position is  
10 'plainly erroneous or inconsistent with the regulations' Auer v.  
11 Robbins, 519 US 452... " 2(b) - "... However, the ultimate  
12 responsibility for establishing a clearer, more consistent  
13 process lies with the EEOC, which should determine, in the first  
14 instance, what revisions to its forms and processes are necessary  
15 or appropriate to reduce the risk of future misunderstandings by  
16 those who seek its assistance."

17 District of Columbia Circuit Court, AAL v. USPS, 14 March  
18 2003, No. 01-5449; - "The District Court granted judgment for  
19 appellees, finding that the regulations "constitute an  
20 impermissible reading of the statute." Aid Ass'n for Lutherans v.  
21 USPS, No. 96-2694, Mem. Op. at 13 (D.D.C. Sept. 13, 2001) ("AAL  
22 Mem. Op."), reprinted in Joint Appendix ("JA") 157, 169; Am. Bar.  
23 Endowment v. USPS, No. 97-660, Mem. Op. at 6 (D.D.C. Sept. 17,  
24 2001) ("ABE Mem. Op.") (finding the "identical analysis" to  
25 apply), reprint- ed in JA 384, 389... appellees may challenge  
actions by the Postal Service that are outside of the scope of  
its statutory authority... On the merits, we hold that the Postal  
Service's regulations exceed the agency's delegated authority  
under the statute... In AAL, the District Court first held that 39  
U.S.C. § 410(a) did not preclude judicial review in this case...  
Id. at 12-13, JA 168-69."

Appellant contends that this is so because the appropriate  
scope of review is something akin to "that appropriate in  
mandamus actions," Nat'l Ass'n of Postal Supervisors v. USPS, 602  
F.2d 420, 432 (D.C. Cir. 1979) ("National Association").  
Appellant's Br. 2-26...

National Association, 602 F.2d at 432. - "With respect to the  
matter at issue in this case - the scope of review of Postal  
Service constructions of PRA - we held that "[t]he judicial role  
is to determine the extent of the agency's delegated authority  
and then determine whether the agency has acted within that  
authority." The agency must still stay within the bounds of the  
delegation in promulgating regulations under the statute. In this  
case, the Postal Service has transgressed the bounds of any  
delegation to fill alleged gaps in the statute, because the  
statute simply cannot bear the meaning that the Postal Service



1 seeks to give it. See MCI Telecomms. Corp. v. Am. Tel. & Tel.  
2 Co., 512 U.S. 218, 229 (1994) ("[A]n agency's interpretation of a  
statute is not entitled to deference when it goes beyond the  
meaning that the statute can bear....")."

3 BURGER, J., Opinion of the Court, Supreme Court of the United  
4 States, 397 U.S. 728, Rowan v. United States Post Office  
5 Department - "... Appellants initiated an action in the United  
6 States District Court for the Central District of California upon  
7 [p731] a complaint and petition for declaratory relief on the  
8 ground that 39 U.S.C. § 4009 (1964 ed., Supp. IV) is  
unconstitutional... The statutory scheme at issue accords to the  
sender an "opportunity to be heard upon such notice and  
proceedings as are adequate to safeguard the right for which the  
constitutional protection is invoked." Anderson Nat. Bank v.  
Lockett, 321 U.S. 233, 246 (1944). It thus comports with the Due  
Process Clause of the Fifth Amendment."

9  
10 Carey v. Piphus, 435 US 247, 98 S.Ct. 1042, 55 L.Ed.2d 252 -  
11 "The Court holds that plaintiffs can recover nominal damages of a  
dollar for the deprivation of procedural due process."

12 Richard Jackson vs. USPS, EEOC No. 01923399, 12 Nov 92, in  
13 the Analysis and Findings - "It is the cardinal principle of  
14 statutory interpretation the courts are required to give effect  
15 to every clause and word of a statute if possible..." "The  
Commission's federal sector case precedent has long defined an  
"aggrieved employee" as one who suffers a present harm of loss  
with respect to a term, condition, or privilege of employment for  
which there is a remedy. Diaz v. Department of the Air Force,  
EEOC Request No. 05931049 (April 21, 1994)."

16  
17 US Court of Appeals for the sixth Circuit Jamie L. McFarland  
18 v. USPS - "in an opinion filed after the district court decided  
19 the present case, the Supreme Court recognized that the 'very  
20 nature' of a hostile work environment 'involves repeated  
conduct.' Nat'l R.R.; Passenger Corp v. Morgan, 122 S.Ct.2061,  
2073 (2002). The unlawful employment practice in a hostile work  
environment 'occurs over a series of days or perhaps years and,  
in direct contrast to (claims based upon) discrete acts, a single  
act of harassment may not be actionable on its own.' Id. 'Given  
therefore, that the incidents comprising a hostile work  
environment are part of one unlawful employment practice, the  
employer may be liable for all acts that are part of this single  
claim." ANALYSIS - "We must construe all of the facts at the  
summary judgment stage of the case in McFarland's favor,  
Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,  
587 (1986),..." "She pled from the very beginning that the Postal  
Service's acts of discrimination had created a hostile work  
environment. In an opinion filed after the district court decided

1 the present case, the Supreme Court recognized that the "very  
2 nature" of a hostile work environment "involves repeated  
3 conduct." "But it is the task of the court to apply the law as it  
4 is, not just as the parties describe it. The facts as set forth  
5 in the complaint and McFarland's affidavit, all of which must be  
6 construed in her favor when evaluating the Postal Service's  
7 motion for summary judgment,..."

#### 8 Conclusion

9 I believe that Officials of the U.S. Postal Service did  
10 significantly conceal information and shifted their lawful  
11 responsibility for the Area Mail Processing Plan development  
12 process and approval. Concealing the information about closing  
13 the Air Mail Center has injured me and the public's right to be  
14 informed and interest protected.

15 I believe that Officials of the U.S. Postal Service did use  
16 false, fictitious, and fraudulent means to force the early  
17 retirement of federal employees. Postal Service Officials used  
18 false, fictitious, and fraudulent reasons (no cost savings) to  
19 contract the work to contractors who are not paying into the  
20 Federal Retirement. This has created an imbalance in the Federal  
21 Retirement Fund program with more retire employees drawing on the  
22 fund and injuring the fewer employees who are paying into the  
23 retirement fund.

24 I believe that U.S. Postal Service Officials have sold  
25 thousands of Federal facilities improperly and have not obeyed  
the law to set aside the funds for maintaining or building new  
federal facilities. This is in violation of the principles of  
ownership set forth by past Presidents and Congress. Postal

1 Service Officials have not only sold public assets at a discount,  
 2 they have also lease thousands of facilities at extra and high  
 3 cost further injuring the Public's interest.

#### 4 STANDARD OF REVIEW

5 Title 39 section 409 - (a)(B) "shall not be immune under any  
 6 other doctrine of sovereign immunity from suit in Federal court  
 7 by any person for any violation of any of those provisions of law  
 8 by an officer of employee of the Postal Service..."

9 Title 29 section 401 Congressional declaration of findings,  
 10 purposes and policy - "... (b) protection of rights of employees  
 11 and the public; "The Congress further finds, from recent  
 12 investigations in the labor and management fields, that there  
 13 have been a number of instances of breach of trust, corruption,  
 14 disregard of the rights of individual employees, and other  
 15 failures of observe high standards of responsibility and ethical  
 16 conduct which require further and supplementary legislation that  
 17 will afford necessary protection of the rights and interests of  
 18 employees and the public..."

19 29 CFR 1614.501 (5) - "Commitment that the agency shall cease  
 20 from engaging in the specific unlawful employment practice found  
 21 in the case."

22 Title 5 section 557 (d)(1)(A)(12) - "... violated shall be  
 23 determined from the perspective of a reasonable person with  
 24 knowledge of the relevant facts."

25 Title 5 section 504 Congressional Findings: Section 202 of  
 title II of Public Law 96-481 provided that: - "(a) The Congress  
 finds that certain individuals, partnerships, corporations, and  
 labor and other organizations may be deterred from seeking review  
 of, or defending against, unreasonable governmental action  
 because of the expense involved in securing the vindication of  
 their rights in civil actions and in administrative proceedings."

Title 5 section 702 - "A person suffering wrong because of  
 agency action, or adversely affected or aggrieved by agency  
 action within the meaning of a relevant statute, is entitled to  
judicial review thereof."

The US Court of Appeals for the Ninth Circuit in Flamingo  
 Industries v. USPS No. 01-15963 in The Procurement Manual Claim  
 the court stated "In 1996, Congress amended 28 USC section 1491,  
 part of the codification of the Tucker Act, by enacting the

1 Administrative Dispute Resolution Act of 1996 (ADRA), Pub. L.  
 2 104-320, 110 Stat. 3870 (1996)." Footnote 5 - "... 28 USC section  
 3 1491(b)(4) imports Administrative Procedures Act (APA) standards  
 4 of review... 28 USC 1491(b)(4) incorporates by reference the APA  
 5 review standards into cases..."

6 Civil Procedures, A Modern Approach, 2<sup>nd</sup> Addition, Chapter I  
 7 Choosing a System of Procedure, - "Nevertheless, there is reason  
 8 to believe that litigants tend to judge the justness of dispute  
 9 proceedings without reference to the outcome is they deem the  
 10 process itself to have been fair (65 Va.L.Rev. 1401, 14112-1414,  
 11 1979). Thus, procedure services to validate the integrity of the  
 12 legal system as a whole by providing a remedial process that  
 13 replaces much more destructive motivations like self-help and  
 14 personal retribution... The function of a trial judge is to serve  
 15 litigants by determining their disputes and the issues implicated  
 16 therein in accordance with applicable rules and law. Established  
 17 procedures lie at the heart of due process and as important to  
 18 the attainment of ultimate justice as the factual merits of a  
 19 case. A judge may not initiate or inspire litigation and, by the  
 20 same token, he may not expand a case before him by adding new  
 21 issues which come to mind during the trial, without giving the  
 22 parties affected a full and fair opportunity to meet those  
 23 issues."

24 York, Bauman & Rrandleman Remedies 4<sup>th</sup> Ed. ACB, chapter 13  
 25 Remedies for Mistakes - Mistake (unilateral): - "Basic fact" +  
 Relative hardship or unjust enrichment of defendant approaching  
 the unconscionable".

The Court found in Flamingo Industries v. USPS, D.C. No. CV-  
 00-02484-MMC, page 12504 B (6) "Having determined that Congress  
 has waived the Postal Service's immunity, we turn to the second  
 inquiry, 'whether the source of substantive law upon which the  
 claimant relies provides an avenue for relief'. Meyer, 510 U.S.  
 at 484." Page 12506 (7) "The Postal Service's sue-and-be-sued  
 waiver of immunity has created a presumption that the cloak of  
 sovereignty has been withdrawn and the Postal Service should be  
 treated as a private corporation. See Franchise Tax Board, 467  
 U.S. at 520." Page 12508 (8) "We hold that the Postal Service  
 can be sued under federal antitrust laws because Congress has  
 striped the Postal Service of its sovereign status by launching  
 it into the commercial world as a sue-and-be-sued entity akin to  
 a private corporation... 'conduct-based' immunity can apply...  
 Accordingly, our holding that the Postal Service does not enjoy  
status-based immunity ..."

Federal Sentencing Guidelines, chapter 3 section 3B1.3 Abuse  
 of Position of Trust - "If the defendant abused a position of  
public or private trust, or used a special skill, in a manner

1 that significantly facilitated the commission or concealment of  
2 the offense, increase by 2 levels... For this adjustment to apply,  
3 the position of public or private trust must have contributed in  
4 some significant way to facilitating the commission or  
5 concealment of the offense (e.g. by making the detection of the  
6 offense or the defendant's responsibility for the offense more  
7 difficult)."

#### 8 Scope of Review

9 Pursuant to Title 5 section 706 I ask the reviewing court to  
10 compel the U.S. Postal Service to produce the approved Area Mail  
11 Processing Plan unlawfully withheld. I ask the court to hold  
12 unlawful and set aside the agency actions, findings and  
13 conclusions that do not conform lawful due processes and intent  
14 of Congress set forth in the Postal Accountability and  
15 Enhancement Act.

#### 16 Remedies

17 1. I ask the Court for a Writ of Mandamus (Title 28 Rule 21,  
18 section 1361 and 1651) pursuant to the Freedom of Information Act  
19 to compel the U.S. Postal Service to produce the Approved (39 CFR  
20 222.2) Area Mail Processing (AMP) Plan directing the closer of  
21 the Air Mail Center (AMC) facilities, Pittston Coal Group v.  
22 Sebben, 109 S. Ct. 414, 424 (1988); Heckler v. Ringer, 466 U.S.  
23 602, 616 (1984).

24 2. I ask that the Court for a Temporary Restraining Order  
25 pursuant to FRCP 65 to stop the U.S. Postal Service from closing  
the SeaTac Air Mail Facility without due process and without

1 approval, City of Waltham v. USPS (D. Mass. 1992) 786 F. Supp.  
2 105.

3 3. I ask the Court for a Permanent Injunction pursuant to  
4 FRCP 65 to bar the U.S. Postal Service from closing,  
5 consolidating or selling any facility without going through the  
6 lawful process and obtaining a Headquarters Approval to do so,  
7 City of Waltham v. USPS (D. Mass. 1992) 786 F. Supp. 105.  
8

9 4. I ask the Court to appoint a Special Master(s) pursuant  
10 to FRCP 53 to:

11 a. To review if each facility closer and contracting was  
12 made in accordance with the rules of the Postal Accountability  
13 and Enhancement Act, USPS Handbook PO-408, Procurement Policies  
14 and in the public's interest, Title 39 section 2802.

15 b. To review if the Postal Service's personnel  
16 reduction/retirement program and the outsourcing of core postal  
17 functions to non-Federal Retirement Fund paying contractors has  
18 injured employees and is a violation of the Employees Retirement  
19 Insurance Savings Act, Register v. Honeywell Federal  
20 Manufacturing & Technologies, LLC., C.A.8 (Mo) 2005, 397 F.3d  
21 1130.

22 c. To undue any actions found to be unlawful (reopen the  
23 facilities) Title 39 section 3691 and to make effected employees  
24 whole (give them their old AMC job back), Title 5 Section 7118.  
25

1 5. I ask that the U.S. Postal Service pay my ligation costs  
2 and the appropriate Freedom of Information Act fine (per day  
3 withheld) to me for the withholding of the information (Approved  
4 Area Mail Processing Plan) as damages, Title 5 section 552.

5 Dated this 3rd day of June, 2009,

6  
7 

8 Lance McDermott  
9 1819 So 104 ST  
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206 763-6268